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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/040,012	10/26/2001	Carlos M. Collazo	020897-000130US	8807
20350	7590	02/18/2005	EXAMINER	
TOWNSEND AND TOWNSEND AND CREW, LLP TWO EMBARCADERO CENTER EIGHTH FLOOR SAN FRANCISCO, CA 94111-3834			BENGZON, GREG C	
			ART UNIT	PAPER NUMBER
			2144	
DATE MAILED: 02/18/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/040,012	COLLAZO, CARLOS M.
	Examiner	Art Unit
	Greg Bengzon	2144

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 26 October 2001.
 2a) This action is FINAL. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-3 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) Claim(s) _____ is/are allowed.
 6) Claim(s) 1-3 is/are rejected.
 7) Claim(s) _____ is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on 26 October 2001 is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This application has been examined. Claims 1-3 are pending.

Priority

This application claims benefits of priority from US Provisional application 60243783, filed October 26, 2000.

The effective date of the subject matter in the claims in this application is October 26, 2000.

Information Disclosure Statement

The information disclosure statements (IDS) submitted on 04/12/2002, 08/19/2002, 10/31/2003 are in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statements are being considered by the examiner.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hafez et al. (US Patent 6513065), hereinafter referred to as Hafez , in view of Strandberg et al. (US Patent 6647412), hereinafter referred to as Strandberg .

With respect to Claim 1, Hafez substantially discloses a method for collecting information about a network's operation, wherein the network includes a plurality of devices. (Figure 3, Column 6 Lines 10-35)

With respect to Claim 2, Hafez discloses the method of claim 1, further comprising using a numerical value to represent a characteristic of a first device in the network; (Column 12 Lines 5-10, Column 13 Lines 15-65) using a second value to represent a characteristic of a second device in the network; (Figure 13, 14) and using a correlation matrix to combine the first and second values to obtain a measure of the network's performance. (Column 11 Lines 5-50, Column 18 Lines 5-60)

With respect to Claim 3, Hafez discloses the method of claim 1, further comprising obtaining a measure of a plurality of characteristics of a first device in the network;(Column 18 Lines 5-60) using the measured plurality of characteristics to generate a value, wherein the value includes one or more of the following: a measure of the operation of devices associated with the first device, a measure of the utilization of one or more resources of the first device, a measure of the response speed of the first device, a measure of the optimization of the network. (Column 11 Lines 5-50)

However, Hafez does not disclose a method for collecting information about a network's operation, wherein the network includes a plurality of devices, the method comprising using peer-to-peer communication among a plurality of devices in the network to obtain a measure of the network performance.

Strandberg discloses a method for propagating status information through all nodes using peer-to-peer communication in a differential network, (Figure 3, Column 1 Lines 55-65, Column 2 Lines 1-40) said status information containing performance parameters such as packet loss, delay rate, queue load, service rate and stability. (Figure 3, Column 3 Lines 1-25)

Hafez and Strandberg are analogous art because they present concepts and practices regarding the capture and assessment of network performance measurements. (See Strandberg Column 4 Lines 1-5, Column 6 Lines 10-65) The Examiner respectfully suggests that it would have been obvious to a person of ordinary skill in the art to combine the teachings regarding peer-to-peer communications by Strandberg into the method of Hafez , such that the data collection components (i.e. agents) are able to exchange information with each other (i.e. other agents) and not just the central monitoring system (i.e. console). The suggested motivation for doing so would be , as Hafez suggests, so that performance data may be summarized on several levels, where each summarization level is coarser in granularity than the previous level. (Abstract) It would have been obvious to a person of ordinary skill in the

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art that the data captured by Strandberg on a per-hop basis, not just on an endpoint-to-endpoint basis, would provide an increased level of granularity that Hafez strives to obtain. Furthermore, since Hafez is presenting a network monitoring system that strives to predict network performance for hypothetical scenarios, it would have been obvious to combine Strandberg in order to allow the status information to be available at the ingress node before the traffic enters the network, thereby enhancing the response capabilities to dynamic network conditions (Column 1 Lines 50-55, Column 9 Lines 1-10)

Thus it would have been obvious to combine the teachings of Strandberg into the method of Hafez in order to arrive at the invention as described in Claims 1-3.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Please refer to the enclosed PTO-892 form.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Greg Bengzon whose telephone number is (571) 272-3944. The examiner can normally be reached on Mon. thru Fri. 8 AM - 4:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, William Cuchlinski can be reached on (571)272-3925. The fax phone

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number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

gcb



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